Re Latifah bte Hussainsa, ex parte Perbadanan Pembangunan Pulau Pinang

HIGH COURT (PULAU PINANG) — BANKRUPTCY NO 29–1596 OF 2000
KAMALANATHAN RATNAM J
18 AUGUST 2004

Bankruptcy — Voluntary agreement — Instalment plan — Payment of judgment sum by way of instalment — Fear that reduction of judgment debt may deprive judgment debtor of remedy in bankruptcy — Justice of case and role of court

The judgment debtor had appealed against the decision of the deputy registrar in dismissing the judgment debtor's application to set aside the creditor's petition with costs. In the course of the appeal, counsel for the judgment debtor informed the court that the judgment debtor was willing to pay a sum of RM1,000 per month to settle the outstanding amount of RM29,306.01.

Held, adjourning the matter until full settlement after which the creditor's petition shall be dismissed:

(1) The court foresaw the predicament of the judgment creditor who feared that the judgment debtor might reduce the sum to below the minimum sum whereby the judgment creditor could be deprived of its remedy in bankruptcy (see para 11).

(2) An ideal decision is one that would benefit both parties without undue hardship or suffering inflicted upon either party (see para 12).

(3) In this case, justice would be done to the judgment debtor if she was allowed to pay the judgment sum in monthly instalments of RM1,000 each for 19 months and the final payment being the 20th instalment, would be the balance sum of RM10,306.01 together with the accrued interest at 12% per annum. In this case the judgment creditor need not fear that its rights under the Bankruptcy Act would be denied (see para 13).

[**Bahasa Malaysia summary**

Penghutang penghakiman merayu terhadap keputusan yang arif penolong pendaftar yang menolak permohonan penghutang penghakiman untuk mengetepikan petisyen pemiutang dengan kos. Semasa rayuan, peguam penghutang penghakiman memberitahu mahkamah bahawa penghutang penghakiman sanggup membayar RM1,000 sebulan bagi menyelesaikan jumlah yang belum bayar sebanyak RM29,306.01.

Diputuskan, menangguhkan perkara ini sehingga penyelesaian penuh yang mana selepas itu petisyen pemiutang akan ditolak:

(1) Mahkamah nampak kesulitan yang dihadapi oleh pemiutang penghakiman yang bimbangkan penghutang penghakiman mungkin mengurangkan jumlah tersebut di bawah jumlah minimum di mana pemiutang penghakiman boleh dinafikan remedinya dalam kebankrapan (lihat perenggan 11).

(2) Keputusan yang unggul adalah satu keputusan yang akan memberi manfaat kepada kedua belah pihak tanpa kesusahan atau penderitaan yang berlebih dibebani oleh mana-mana pihak (lihat perenggan 12).

(3) Dalam kes ini, keadilan dapat dicapai bagi penghutang penghakiman jika beliau dibenarkan membayar jumlah penghakiman secara ansuran bulanan sebanyak RM1,000 sebulan untuk 19 bulan dan bayaran terakhir iaitu ansuran ke-20, adalah merupakan baki jumlah RM10,306.01 bersama dengan faedah terakru pada kadar 12% setahun. Dalam keadaan ini pemiutang penghakiman tidak perlu bimbang yang hak-haknya di bawah Akta Kebankrapan dinafikan (lihat perenggan 13).]

Notes

For cases on voluntary agreements involving instalment plans, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2641–2644.

Cases referred to

Re MS Ward [1933] MLJ 69 (folld)

Legislation referred to

Bankruptcy Act 1967 s 6(3)
Bankruptcy Rules 1969 Form No 9
Rules of the High Court 1980 O 7 r 2(1A), O 9 r 2(1A)

Ng Siew Mei (Murad & Foo) for the judgment creditor.
Simon Tan (Lee Hean Cheng & Co) for the judgment debtor.

Kamalanathan Ratnam J:

FACTS

[1] Enclosure 13 was an appeal by the judgment debtor against the decision of the learned deputy registrar dismissing the judgment debtor's application to set aside the creditor's petition with costs.

FINDINGS OF THE COURT

[2] Mr Simon Tan for the judgment debtor pointed out that the creditor's petition was invalid for non-compliance with O 7 r 2(1A) of the Rules of the High Court 1980 ('the RHC') which reads as follows:

> Every originating summons shall state in its intitulement the particular rule of Court and provisions of written law under which the Court is being moved.

[3] Counsel then also referred to O 9 r 2(1A) which reads as follows:

> Order 7 rule 2(1A) shall apply in relation to a petition as it applies in relation to an originating summons.

[4] Contending therefore that a petition ought to be treated in a similar fashion as that of an originating summons, counsel argued that the creditor's petition was therefore flawed and ought to have been dismissed.

[5] Ms Ng for the judgment creditor on the other hand referred me to the sample of the creditor's petition as shown in No 9 of the forms annexed to the Bankruptcy Rules 1969.

[6] In the meantime counsel for the judgment debtor informed the court that the judgment debtor was willing to pay a sum of RM1,000 per month to settle the outstanding amount of RM29,306.01.

[7] When I heard of this offer I decided to act pursuant to s 6(3) of the Bankruptcy Act 1967 which reads as follows:

> If the court is not satisfied with the proof of the petitioning creditor's debt or of the act of bankruptcy or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the court may dismiss the petition.

[8] I was also guided by the very old decision of Murison CJ in *Re MS Ward* [1933] MLJ 69 wherein the learned Chief Justice adopted this same procedure although he adjourned the creditor's petition until the debt was settled.

[9] In the case before me the judgment debtor was also agreeable to pay the interest up to the last payment, at the rate of 12% per annum as claimed by the judgment creditor.

[10] Ms Ng referred me to *William's Law & Practice in Bankruptcy* (18th Ed) at pp 64 and 65 which read as follows:

> Where a debtor had, before act of bankruptcy, tendered a part of his debt at the express request of the creditor, which was refused solely in order to keep a debt of over £50 subsisting, the petition was dismissed as an abuse of process; but the facts were exceptional, and it is submitted that where, without any request on the part of the creditor, tender is made of a part of the debt so as to reduce it below

A £50 and deprive the creditor of his remedy in bankruptcy, the creditor's refusal is justified.

[11] I could well foresee the predicament of the judgment creditor who feared that the judgment debtor might reduce the sum to below the minimum sum whereby the judgment creditor could be deprived of its remedy in
B bankruptcy.

[12] At the end of the day a judge's job is to meet out justice. An ideal decision is one that would benefit both parties without undue hardship or suffering inflicted upon either party.

C **[13]** In the present case the judgment creditor is the Perbadanan Pembangunan Pulau Pinang which body was set up to serve the people and not bring about undue hardship. Here justice would be done to the judgment debtor if I allowed her to pay the judgment sum in monthly instalments of RM1,000 each for 19 months and the final payment being the 20th
D instalment, would be the balance sum of RM10,306.01 together with the accrued interest at 12% per annum. In this case the judgment creditor need not fear that its rights under the Bankruptcy Act would be denied. I also made no order as to costs in the exercise of my discretion.

[14] I did not dismiss the petition but following the case in *Re MS Ward* I
E shall adjourn this matter until full settlement after which this creditor's petition shall be dismissed.

Matter adjourned.

Reported by Loo Lai Mee

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